RECENT DECISIONS.

GARDNER P. LLOYD, *Editor-in-Charge.*

BILLS AND NOTES—INDORSEMENT AFTER MATURITY—SET-OFF.—In an action on a promissory note indorsed to the plaintiff after maturity, the maker sought to set off a collateral claim against the indorser. *Held,* the set-off should be allowed. *McKay* v. *H. A. Hall & Co.* (Okla., 1912) 120 Pac. 1108.

After maturity, a negotiable instrument is usually considered a mere chose in action, so that the indorsee should take it subject to equities. *Harris* v. *Burwell* (1871) 65 N. C. 584; *Downing* v. *Gibson* (1880) 53 Ia. 517. This rule has not been consistently adhered to, however, and many anomalous distinctions have been made by the courts. 11 Harv. L. Rev. 40. Thus, it has generally been held that the indorsee should be protected against the equities of all except the maker, *Y. M. C. A.* v. *Bank* (1899) 179 Ill. 599; *Connell* v. *Bliss* (1864) 52 Me. 476, and even against those of the maker which arise after the indorsement, though before notice of it. *Whittaker* v. *Kuhn* (1879) 52 Ia. 315; *Davis* v. *Miller* (Va. 1857) 14 Gratt. 1. What claims are entitled to be set off by the maker of the note is of course dependent upon the interpretation of the various statutes of set-off. Usually, however, claims arising from collateral transactions are not regarded as equities, but as mere personal claims against the indorser, and the indorsee is held liable only to such defences as arise from the same transaction as the instrument itself. *Burrough* v. *Moss* (1830) 10 B. & C. 558; *Leavitt* v. *Peabody* (1882) 62 N. H. 185; *contra, Sargent* v. *Southgate* (Mass. 1827) 5 Pick. 312. Nevertheless, the unusually broad language of the Oklahoma statute of set-off undoubtedly justifies the decision of the principal case.

CARRIERS—LIABILITY OF LESSOR—DISCRIMINATION IN SIDINGS.—In an action for discrimination in siding facilities, the defendant pleaded that it had previously leased its line to another carrier. A statute granted the power to make such a lease. *Held,* the plea was good. *Moser* v. *Philadelphia, H. & P. R. Co.* (Pa. 1912) 82 Atl. 362.

A carrier assumes certain duties to the public in return for the privileges granted by its franchise. *York etc. R. R. Co.* v. *Winans* (1854) 58 U. S. 30. In the absence of legislative authority to lease its plant, therefore, these duties cannot be avoided, and a lessee is regarded as acting as a mere agent of the lessor. *Abbott* v. *Johnstown etc. R. R. Co.* (1880) 80 N. Y. 27; *Lee* v. *S. P. R. R. Co.* (1897) 116 Cal. 97. And even when the power to lease has been expressly granted by statute, it is held in many States that this does not imply any exemption from the obligations originally assumed. Noyes, Intercorporate Relations, § 219; *C. & G. T. Ry. Co.* v. *Hart* (1904) 209 Ill. 414. The better view, however, is that the legislature intends by such a statute to allow the carrier to escape all liabilities except those for which a landlord is ordinarily responsible, *Pinkerton* v. *Traction Co.* (1899) 193 Pa. 229; *Ackerman* v. *Cincinnati etc. R. R. Co.* (1906) 143 Mich. 58, for otherwise the statutory permission would be of practically no effect. The lessor company should, then, be liable only for defects in the construction of its plant, and the lessee alone should be responsible for injuries arising from the operation of the road. Taylor, Landlord & Tenant, (9th ed.) § 175; *Arrowsmith* v. *N. & D. R. R. Co.* (1893)

57 Fed. 165. As the furnishing of sidings appears to be a detail of operation rather than of construction, the principal case adopts the preferable doctrine.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—FINE IN QUO WARRANTO PROCEEDINGS.—In *quo warranto* proceedings for violation of the Missouri Anti-trust Act, a fine of $50,000 was imposed. The defendants appealed upon the ground that the judgment was entered without the notice and hearing essential to due process of law in that such relief was not responsive to the cause of action. *Held,* the judgment was valid. *Standard Oil Company of Indiana* v. *State of Missouri* (U. S. 1911) 32 Sup. Ct. Rep. 406. See Notes, p. 548.

CONTEMPT—CONSTRUCTIVE CONTEMPT—INITIATION OF PROCEEDINGS TO PUNISH.—The plaintiff, having been convicted of contempt of court in publishing libelous statements in a newspaper, appealed on the ground that the court had no jurisdiction, no preliminary affidavit or order reciting the facts having been filed. *Held,* two judges dissenting, the judgment should be quashed. *Lee* v. *State* (Ark. 1912) 143 S. W. 909.

According to the weight of authority, newspaper publications should not be punishable as in contempt of court unless they amount to more than mere personal libels and actually tend towards the obstruction or perversion of justice. 2 COLUMBIA LAW REVIEW 246. Therefore, because the question involved is largely one of public policy, it has been held that the court should not be dependent on the testimony of outsiders, but should take judicial notice of the publication and proceed on its own motion to punish it. *People* v. *Court* (N. Y. 1864) 27 How. Pr. 14. But the arbitrary nature of the power to punish for contempt has led to the view that greater restrictions are necessary in order to safeguard the rights of the individual. *Batchelder* v. *Moore* (1871) 42 Cal. 412; *Phillips* v. *Welch* (1877) 12 Nev. 158. Accordingly, the prevailing rule is that the facts must be brought to the attention of the court by affidavit, *Wyatt* v. *People* (1892) 17 Colo. 252, or indictment, *State* v. *McClaugherty* (1889) 33 W. Va. 250, and in many States express statutes so provide. *Young* v. *Cannon* (1880) 2 Utah 560; *In re Coulter* (1901) 25 Wash. 526. Moreover, even in jurisdictions where the court itself is permitted to initiate proceedings, it is usual first to make an order placing the facts upon the record. *State* v. *Morrill* (1855) 16 Ark. 386; *State* v. *Frew* (1884) 24 W. Va. 416. The decision of the principal case, therefore, is undoubtedly correct in holding that the lower court, having failed to adopt either of these methods of procedure, was without jurisdiction.

CONTRACTS — INDEMNITY CONTRACTS — SPECIFIC PERFORMANCE. — The plaintiff bought stock for the defendants, who agreed to pay for it as bought and to indemnify the plaintiff against loss. Upon the defendants' failure to pay, but before suffering any loss, the plaintiff sued in equity for specific performance of the covenant to pay. *Held,* the plaintiff should succeed. *Roberts et al.* v. *Keene et al.* (1911) 133 N. Y. Supp. 1091.

It is well settled that a surety may maintain a bill *quia timet* in equity before he has suffered any loss, procuring exoneration by a decree compelling the debtor to pay the obligation. Story, Eq. Jur. (13th ed.) § 327; *Union Trust Co.* v. *Morrison* (1888) 125 U. S. 591.

The rights of parties to an indemnity contract, however, are not based upon equitable principles, but are created by express contract, and equity therefore refuses to interfere before the happening of the contingency upon which the right to indemnity rests. *Central Trust Co.* v. *Louisville Trust Co.* (1900) 100 Fed. 545; *Bank* v. *Hastings* (Mich. 1844) 1 Doug. 225. But a contract of indemnity against loss should be distinguished from one of indemnity against liability. *Brown* v. *Bank* (1899) 59 N. Y. Supp. 354. When, as in the principal case, the indemnitor promises to pay the obligation when it becomes due, he is then responsible to the indemnitee, although the latter has not yet suffered any loss. *Champion* v. *Brown* (N. Y. 1822) 6 John. Ch. 398. The indemnitee may enforce this liability at law, but his damages would be nominal. Courts of equity, therefore, holding that the remedy at law is not adequate, and that the indemnitee should not be forced to satisfy the debt before proceeding against the indemnitor, *Hoy* v. *Hansborough* (Miss. 1844) 1 Freeman Ch. 533, usually enforce specific performance of the contract of indemnity.

CONTRACTS—RECOVERY FOR WORK DONE BY A VOLUNTEER.—The plaintiff, having contracted with the defendant to excavate certain property, sought to recover for part of the work which a contractor excavating nearby had performed by mistake. *Held,* three judges dissenting, there could be no recovery. *St. George Contracting Co.* v. *City of New York* (N. Y. Ct. of App. March 26, 1912). Not yet reported.

Where there has been no assignment of the contract, the rule is established that a volunteer can acquire no rights under a contract to which he is not a party. *Boston Ice Co.* v. *Potter* (1877) 123 Mass. 28; *Boulton* v. *Jones* (1857) 2 H. & N. 564. The principal case is one of novel impression, involving the right of a promisee to recover on a contract which a volunteer has performed. If the work had been done pursuant to an agreement with the promisor, *Hunt* v. *Test* (1845) 8 Ala. 713; *Marshall* v. *Craig* (Ky. 1809) 1 Bibb 379, or if the latter had performed the work himself, *Glaspie* v. *Glassow* (1881) 28 Minn. 158, the promisee could have recovered on the ground that the defendant had rendered performance of the contract impossible. A closer analogy may be drawn from those cases in which the destruction of the subject matter without the fault of either party renders performance impossible and frees both parties from liability on the contract. *Taylor* v. *Caldwell* (1863) 3 Best. & S. 826; *Butterfield* v. *Byron* (1891) 153 Mass. 517. It is submitted that the plaintiff's right to recover depends on his ability to ratify the act of the volunteer. This he cannot do in the principal case, as only those acts done professedly on his behalf may be adopted by him. *Keighly* v. *Durant* L. R. [1901] A. C. 240; *Wilson* v. *Tumman* (1843) 6 M. & G. 235. Although the defendant has obtained the results contracted for, there is no theory on which the performance by the volunteer can enure to the benefit of the plaintiff. But see *McGuire* v. *Lumber Co.* (1906) 97 Minn. 293.

CONTRACTS—SUBSCRIPTION PAPERS—CONSIDERATION.—To a suit brought by the plaintiff upon a subscription paper, the defendant pleaded want of consideration. *Held,* the promises of the other subscribers were an adequate consideration. *Brown* v. *Marion Commercial Club* (Ind. 1912) 97 N. E. 958.

There is great diversity of opinion as to what constitutes the consideration for subscription agreements. By one view, each promisor re-

quests as consideration the promises of the other subscribers; *Petty* v. *Church* (1883) 95 Ind. 278; *Academy* v. *Robinson* (1860) 37 Pa. 210; by another, the signers impliedly ask the promisee to undertake the enterprise, and, in accepting the terms of the paper, he impliedly promises to do so, thus making a bilateral contract. *School Dis't.* v. *Shiedley* (1897) 138 Mo. 672; *Haskell* v. *Oak.* (1883) 75 Me. 519. Both views seem to distort the facts, for the usual passive attitude of the subscriber scarcely warrants the implication of any request by him. The most prevalent theory, however, holds that the consideration is the incurring of a liability by the promisee in reliance upon the subscription, *Hotel Co.* v. *Encampment Co.* (1892) 140 Ill. 248; *Sherwin* v. *Fletcher* (1897) 168 Mass. 413, although it is well settled that in other types of contracts mere reliance upon a promise is not consideration. *Bragg* v. *Danielson* (1866) 141 Mass. 195; 1 Page, Contracts, § 277. Since it is as easy to supply an adequate consideration for subscriptions as for other promises, see *Rogers* v. *College* (1898) 64 Ark. 627; *Whitsitt* v. *Church* (1884) 110 Ill. 125; *Barnett* v. *College* (1893) 10 Ind. App. 103, it is not plain why the courts should favor this one type of agreement. If, however, public policy demands the enforcement of such philanthropy, see *Irwin* v. *Univ.* (1897) 56 Oh. St. 9, it seems that the best theory on which to accomplish this is that the promisee furnishes a consideration in undertaking the work. Regarding the other subscriptions as the consideration involves more strain on the facts, and the further difficulty that it is a beneficiary, and not the promisee, who is interested in enforcing the contract.

CORPORATIONS—RECEIVERS—RIGHT TO SUE IN FOREIGN JURISDICTION—A receiver of an insolvent Minnesota corporation brought suit in a Wisconsin court to enforce a stockholder's liability imposed by a statute of the former State. The defendant claimed that the plaintiff could not sue in Wisconsin. *Held,* under the "full faith and credit" clause of the Constitution, the suit must be permitted. *Converse* v. *Hamilton* (U. S. Sup. Ct. April 1st 1912.) Not yet reported.

The liability to a corporation's creditors which statutes may impose on the shareholders can, in general, be enforced outside the State, *Flash* v. *Conn* (1883) 109 U. S. 371; 12 COLUMBIA LAW REVIEW 450, and the judgment against the corporation fixing the extent of this obligation is binding upon a foreign stockholder, who is a part of the corporation. *King* v. *Cochran* (1904) 76 Vt. 141; 9 COLUMBIA LAW REVIEW 168. This liability cannot be enforced in most jurisdictions by an ordinary receiver, since it is an obligation directly to the creditors, and not an asset of the corporation. *Minn. Baseball Co.* v. *City Bank* (1896) 66 Minn. 441; but *cf. Hanson* v. *Davison* (1898) 73 Minn. 454. But a contrary rule prevails in a few States, by a mistaken analogy to the receiver's right to recover unpaid subscriptions, *Howarth* v. *Lombard* (1900) 175 Mass. 570, which clearly are corporate assets. *Fish* v. *Smith* (1900) 73 Conn. 377. But a receiver is merely an arm of the court appointing him, and, though most States will through comity allow a foreign receiver to bring any suit which does not violate domestic policies, *Kirtley* v. *Holmes* (1901) 107 Fed. 1; *Hurd* v. *City of Elizabeth* (1879) 41 N. J. L. 1, he cannot demand recognition as guaranteed under the "full faith and credit" clause. *Covell* v. *Fowler* (1906) 144 Fed. 535; 6 COLUMBIA LAW REVIEW 521. This difficulty is overcome, however, by a decree of assignment, *Bernheimer* v. *Converse* (1906) 206 U. S. 516, or, as in the principal case, by an express enact-

ment, which vests the creditors' rights against the stockholders in the receiver as trustee. *King* v. *Cochran supra; Relfe* v. *Rundle* (1880) 103 U. S. 222; but see *Howarth* v. *Angle* (1900) 162 N. Y. 179; *Hale* v. *Hardon* (1899) 95 Fed. 747.

CRIMINAL LAW—INHERENT POWER OF COURT TO CONTROL SENTENCE—SUBSEQUENT COMMITTAL.—After a plea of *non vult* the court indefinitely postponed rendering sentence. Over two years later the petitioner was committed to prison and a writ of *habeas corpus* was secured. *Held,* the court had inherent power to suspend indefinitely the rendering of sentence and the petitioner was promptly committed. *Gehrmann* v. *Osborne* (N. J. 1912) 82 Atl. 424.

The defendant was duly convicted and sentence imposed. The execution of the sentence was indefinitely suspended during the good behavior of the defendant. Later an order was made imposing the sentence and he appealed. *Held,* the suspension was void and the defendant must serve the sentence. *Fuller* v. *State* (Miss. 1912) 57 So. 806. See Notes, p. 543.

CRIMINAL LAW—MURDER—DURESS.—The defendant participated under compulsion in a robbery which resulted in the commission of a murder by one of his associates. A statute made duress an excuse for all crimes except murder. *Held,* the defendant was guilty of murder. *State* v. *Moretti* (Wash. 1912) 120 Pac. 102.

At common law duress was not regarded as an excuse for a criminal act. 1 Hale, Pleas of the Crown, 51; *Regina* v. *Tyler* (1838) 8 C. & P. 616. Now, however, the harshness of this rule has been modified, and one who does wrong under an immediate fear of death or bodily injury is not responsible. 1 Wharton, Criminal Law, § 94. But, as duress in civil cases renders an act voidable rather than void, so it would seem to relieve a criminal from punishment for his wrongful act rather than to absolve him from guilt. Stephen, Digest of Criminal Law, § 31 n. 2; *cf. State* v. *Dowell* (1890) 106 N. C. 722. The defendant in the principal case was therefore technically guilty of robbery, though protected by the statute from prosecution for that crime, and might be held guilty of the resulting murder. *Williams* v. *State* (1886) 81 Ala. 1. Nevertheless, since the criminal intent essential to constitute murder was purely constructive and inferred from the wrongful purpose involved in the robbery, May, Criminal Law, (3rd Ed.) § 28, a more lenient construction would seem preferable. The decision, though theoretically correct, presents the anomaly of a defendant protected from liability for the natural results of his act, but responsible for unforeseen and unexpected consequences.

DEEDS—ALTERATION—BURDEN OF PROOF.—The plaintiff claimed land under a deed in which the erasure of an initial in the name of the grantee was apparent. *Held,* that the burden of showing that the erasure had been made after delivery, was upon the defendant. *Tharp* v. *Jamison, Sheriff, et al.* (Ia. 1912) 134 N. W. 583.

In some jurisdictions an erasure apparent upon the face of a deed is presumed to have been made after execution, so that one who claims under the instrument must explain the apparent alteration. *Humphreys* v. *Guillow* (1843) 13 N. H. 385; *Waring* v. *Smyth* (N. Y. 1847) 2 Barb. Ch. 119. Other courts, asserting that there is no presumption of law with regard to the erasure, leave it to the jury to find whether

it was made before or after delivery. *Bailey* v. *Taylor* (1836) 11 Conn. 531; *Stillwell* v. *Patton* (1891) 108 Mo. 352. The prevailing view, however, is that the change should be presumed to have been made before, or contemporaneously with, the execution of the deed. *Ward* v. *Cheney* (1897) 117 Ala. 238. Since alterations are often made in a deed before delivery, *Beaman* v. *Russell* (1848) 20 Vt. 205, and presumptions of law, which are based on the experienced course of human conduct, should be in favor of innocence rather than of guilt, *Wilson* v. *Hayes* (1889) 40 Minn. 531, the decision of the principal case seems correct in placing the burden upon the defendant. However, when there is evidence of suspicious circumstances in regard to the erasure, or when it has been proved that it was made after delivery, the burden of explaining the alteration is upon the party claiming under the deed. *Jordan* v. *Stewart* (1854) 23 Pa. 244.

EVIDENCE—LEGISLATIVE RECORDS—CONCLUSIVENESS OF.—A statute appeared upon its face and from the journals of both houses of the legislature to have been regularly passed. Evidence was offered to prove that the governor had not returned the bill within the period required by statute in order for it to become a law. *Held,* two judges dissenting, the evidence was inadmissible. *State* v. *Joseph* (Ala. 1911) 57 So. 942.

If an enrolled act appears valid upon its face, the legislature is sometimes conclusively presumed to have acted according to law, and, because of the theory of the separation of powers, the judicial department will not inquire further as to whether the bill was in fact validly passed. *State* v. *Jones* (1893) 6 Wash. 452; *Sherman* v. *Story* (1866) 30 Cal. 253. But as certain constitutional requirements must be met before the bill can become a statute, the courts in most jurisdictions inspect the legislative journals also, in order to ascertain that the legislature has fulfilled these requirements. *Osburn* v. *Staley* (1871) 5 W. Va. 85; *State* v. *Platt* (1870) 2 S. C. 150. Other evidence, however, is usually excluded, on the ground that the stability of the laws should not be dependent on extrinsic evidence. *State* v. *Smith* (1880) 44 Oh. St. 348; *Division of Howard County* (1875) 15 Kan. 195; *contra, Jones* v. *Jones* (1849) 12 Pa. 350. It would seem that the courts might well receive any evidence which would prove that the constitutional requirements had not been complied with, *Jones* v. *Jones supra; Legg* v. *Mayor* (1874) 42 Md. 203, and in the principal case, since the legislative journals were silent as to the time of the governor's return of the bill, the evidence offered might have been admitted.

EVIDENCE—NEGLIGENCE—CUSTOM OR HABIT.—In an action for injuries received in a railroad accident observed by witnesses, evidence that the plaintiff was usually cautious in crossing the tracks was admitted. *Held,* the evidence should have been excluded. *Zucker* v. *Whitridge* (N. Y. 1912) 47 N. Y. L. J. No. 7.

Evidence of a custom or habit is clearly relevant as tending to show whether the act which is the subject of the habit was done on the particular occasion in question. *Craven* v. *C. P. R. R. Co.* (1887) 72 Cal. 345; 1 Wigmore, Evidence, § 92. The probative force of such evidence, however, depends upon the regularity of the habit, while the evidence is objectionable because it raises collateral issues. *Adams* v. *C. M. & St. P. Ry. Co.* (1895) 93 Ia. 565. It is admitted, therefore,

only when its probative force is sufficient to overcome this objection. *Shaber* v. *St. P., M. & M. Ry. Co.* (1881) 28 Minn. 103; *Meier* v. *Shrunk* (1890) 79 Ia. 17. Evidence of general habits of carefulness or negligence is of little value in proving carefulness or negligence upon any particular occasion, *Junction City* v. *Blades* (1895) 1 Kan. App. 85, and is usually regarded as proof merely of a careful or reckless character, negligence being considered an exceptional condition which cannot be the basis of a habit. 1 Wigmore, Evidence, § 97. Such evidence is therefore excluded in most jurisdictions, *B. & O. R. Co.* v. *Colvin* (1888) 118 Pa. 230; *McCarragher* v. *Rogers* (1890) 120 N. Y. 526, although a few admit it, because of the necessity of the case, when there were no eye witnesses of the act in question. *C., R. I. & P. Ry. Co.* v. *Clark* (1883) 108 Ill. 113; see *Tenney* v. *Tuttle* (1861) 83 Mass. 185; *contra, Chase* v. *M. C. R. R. Co.* (1885) 77 Me. 62. Evidence of care or negligence in doing a particular thing is usually excluded also. *L. & N. R. R. Co.* v. *McClish* (1902) 115 Fed. 268; *P & P. U. Ry. Co.* v. *Clayberg* (1883) 107 Ill. 644. Some courts, however, receive it, *Smith* v. *B. & M. R. R.* (1899) 70 N. H. 53; *S. F. & W. R. Co.* v. *Flanagan* (1889) 82 Ga. 579, particularly when other testimony is lacking or conflicting, *Craven* v. *C. P. R. R. Co. supra; Pittsburgh etc. Co.* v. *McNeil* (Md. 1903) 66 N. E. 777, and its high degree of probative force would seem to warrant its admission much more generally.

HUSBAND AND WIFE—LARCENY OF HUSBAND'S GOODS BY WIFE.—The defendant was indicted for larceny from her husband. *Held,* the direction of a verdict of not guilty was proper. *State* v. *Phillips* (Oh. 1912) 97 N. E. 976.

Since the notion that husband and wife are one does not relieve him of criminal liability for an assault upon her, Baron and Feme, (2nd ed.) 9; *State* v. *Mabrey* (1870) 64 N. C. 592, the common law rule that the wife cannot steal from her husband seems to depend upon her delegated agency in his goods. See *People* v. *Schuyler* (N. Y. 1827) 6 Cow. 572; *Regina* v. *Featherstone* (1854) 6 Cox C. C. 376. The cases however refer this rule, *Queen* v. *Kenny* (1877) L. R. 2 Q. B. D. 307; *Regina* v. *Avery* (1859) Bell C. C. 150, as well as that denying the wife the right to sue her husband in tort, *Phillips* v. *Barnet* (1876) L. R. 1 Q. B. D. 436; *Abbott* v. *Abbott* (1877) 67 Me. 304, entirely to the fiction of unity. Nothing, therefore, short of a fundamental change in the theory of the legal relation between husband and wife can remove these disabilities. Moreover, to construe the enabling statutes as making the husband punishable for taking the wife's goods, and permitting her to sue him in tort except in so far as the statutes permit suits for the protection of her separate estate, see *Whitney* v. *Whitney* (N. Y. 1867) 3 Abb. Pr. [N. S.] 350, would result in giving to her superior protection and rights, unless reciprocal advantages be extended to him by interpreting the statutes to have abrogated the basic notions which would otherwise prevent it. See 10 Albany L. J. 273. With this issue presented the courts have generally held, in accord with the principal case, that the fiction of unity was not intended to be abolished. *Schultz* v. *Schultz* (1882) 89 N. Y. 644, reversing 27 Hun 26; *Thompson* v. *Thompson* (1910) 218 U. S. 611; *contra, Hunt* v. *State* (1904) 72 Ark. 241. The hesitancy of the courts to take a more liberal position has been partly due to a conviction that the old rules are sound in policy. But a rational

construction of the rights conferred by the marriage contract would prevent the absurd results feared in some quarters, see *Walker* v. *Reamy* (1860) 36 Pa. 410, and an ultimate change from the fiction of unity to a recognition of the legal independence of the wife, seems both desirable and inevitable.

INSURANCE—MUTUAL LIFE INTEREST OF BENEFICIARY.—Action was brought on a mutual benefit insurance certificate payable to the "children" of the insured. The defendant pleaded that representatives of a child who died before the insured be made parties plaintiff. *Held,* the predeceased child had no interest which survived him and his representatives, therefore, were not necessary parties. *Martin* v. *Modern Woodmen of America* (Ill. 1912) 97 N. E. 693. See Notes, p. 551.

INTERSTATE COMMERCE—GARNISHMENT BY STATE COURT—VALIDITY.—A state court attached property under trustee process while it was in the hands of an interstate carrier consigned to a person in another State. The defendant pleaded that the attachment constituted an interference with interstate commerce. *Held,* the plea was bad. *Rosenbush et al.* v. *Bernheimer et al.* (Mass. 1912) 97 N. E. 984.

While Congress has exclusive jurisdiction over interstate commerce, it is settled that a State has the right to enact laws for the protection of its citizens, and that all persons, while within the limits of the State, are amenable to such laws. *Stone* v. *Farmers' Loan & Trust Co.* (1886) 116 U. S. 307. Therefore, although a State cannot directly regulate or burden interstate commerce, it does not follow that an otherwise valid local law will be held invalid merely because it indirectly affects interstate commerce. *Geer* v. *Conn.* (1896) 161 U. S. 519. However, if the chief purpose of the state law is to control interstate commerce, *Railroad* v. *Jacobson* (1900) 179 U. S. 287, or if it is not justified by the requirements of local conditions, its effect upon interstate commerce will render it void. *Railroad* v. *Illinois* (1900) 177 U. S. 514. But since attachment laws for the benefit of cerditors represent a proper and salutory exercise of the State's authority to enforce the rights of its citizens, it is generally held that they will not be defeated merely because they incidentally interfere with interstate commerce. *Davis* v. *Railroad* (1910) 217 U. S. 157.

JURY—INCOMPETENCY OF JUROR—WAIVER OF DISQUALIFICATION.—After he had been convicted of murder, the defendant moved to set aside the verdict because one juror lacked the property qualification required by statute. *Held,* the defendant's failure to question the juror with regard to this qualification constituted a waiver. *State* v. *Cosmos* (N. Y. Ct. of App. March 26, 1912). Not yet reported.

It is held in some States that a disqualified person is no juror, and, therefore, that the defendant cannot waive the defect. *Shane* v. *Clark* (Md. 1792) 3 H. & M'H. 101, see 12 COLUMBIA LAW REVIEW 163. Other jurisdictions, while recognizing that there may be a waiver in civil suits, hold that there can be none in criminal cases, because it is the duty of the state to furnish competent jurors. *Hill* v. *People* (1868) 16 Mich. 351; *cf. State* v. *Vogel* (1868) 22 Wis. 449. The general rule, however, is that when a new trial is sought because a disqualified person acted as a juror, the defendant must show that the disqualification was unknown to him at the time of trial, and that he exercised due diligence to ascertain it. *Chase* v. *People* (1866) 40 Ill.

352; *Eastman* v. *Wight* (1854) 4 Oh. St. 156. A failure to question the juror upon the matters which form the basis of the subsequently claimed defect is usually regarded as a lack of diligence, *Jeffries* v. *Randall* (1817) 14 Mass. 205; *Gillooley* v. *State* (1877) 58 Ind. 182, although it has been suggested that the defendant should not be forced to antagonize the jury by questioning them on all possible grounds of incapacity. *Brown* v. *State* (1859) 28 Ga. 439. Moreover, according to the prevailing view, the defendant has no absolute right to a new trial even when he has shown that he did not waive the disqualification, but it is discretionary with the court whether one will be granted. *Woodward v. Dean* (1873) 113 Mass. 297. This is in accordance with sound policy, for mere technical defects should not be permitted to obstruct justice and afford protection to criminals.

MASTER AND SERVANT—CONTRACTS—HIRING AT WILL.—The defendant was sued for breach of a contract requiring him to devote his whole time to the plaintiff's business at a salary to be paid weekly. *Held,* this was a hiring at will and the defendant might terminate it at any time. *Watson* v. *Gugino* (N. Y. 1912) 98 N. E. 18.

Contracts of employment are usually regarded as bilateral, and when a servant agrees to perform services for a definite time, the master is impliedly bound to hire him for the same period. Wood, Master & Servant, § 81. Moreover, if an employee for a stated term continues after its expiration to render services without objection by the master, a new contract of the same duration arises by implication. *Dickinson* v. *Norwegian Plow Co.* (1898) 101 Wis. 157; *Kelly* v. *Wheel Co.* (1900) 62 Oh. St. 598. The courts, however, are not in harmony in their interpretation of general contracts of hiring. In England there is an arbitrary presumption of a yearly term of employment regardless of the method of payment, *Beeston* v. *Collyer* (1827) 4 Bing. 309; *Lilley* v. *Elwin* (1848) 11 Q. B. 742, except when some other rule is established by custom. See *Fawcett* v. *Cash* (1834) 3 Nev. & Man. 177. A few jurisdictions in this country consider the method of payment as indicative of the period of service contracted for, *Beach* v. *Mullin* (1870) 34 N. J. L. 343; *Hotel Co.* v. *Leopold* (1897) 72 Ill. App. 108, but the majority view is that represented by the principal case. Wood, Master & Servant, § 134; *Martin* v. *N. Y. Life Ins. Co.* (1895) 148 N. Y. 117; *Finger* v. *Brewing Co.* (1883) 13 Mo. App. 310. Where no definite period of service is contracted for, therefore, the method of payment is not indicative of the intention of the parties as to the term of service, but is merely a convenient way of computing the value of the services rendered.

MORTGAGES—ASSIGNMENT—NOTICE TO MORTGAGOR.—The plaintiff, the holder under an unrecorded assignment of a mortgage securing a non-negotiable instrument, sought to foreclose it. The defendant pleaded payment to the mortgagee after the assignment, but before notice of it. No surrender of the securities had been requested upon payment. *Held,* the plea was invalid. *Assets Realization Co.* v. *Clark* (N. Y. Ct. of App. March 26, 1912). Not yet reported.

Payment to a mortgagee before notice of an assignment of the mortgage discharges the debtor, *Heermans* v. *Ellsworth* (1876) 64 N. Y. 159; *Barry* v. *Stover* (1906) 20 S. D. 459, except when the obligation is a negotiable instrument which has been transferred for value.

Murphy v. *Barnard* (1894) 162 Mass. 72; *Burhans* v. *Hutcheson* (1881) 25 Kan. 625. Since a mortgage is a conveyance within the provisions of the recording acts, *James* v. *Johnson* (N. Y. 1822) 6 Johns. Ch. 416, record is constructive notice, *Woodward* v. *Brown* (1897) 119 Cal. 283, though the mortgagor himself is usually excepted from this rule. N. Y. Real Prop. Law, § 324; *contra, Cornish* v. *Woolverton* (1905) 32 Mont. 456. However, facts sufficient to put the debtor on inquiry operate as notice. 1 Jones, Mortgages, § 545. Thus, a failure to surrender the securities upon payment is generally regarded as such notice, which, in the absence of due diligence by the debtor in ascertaining the true state of facts, *Bacon* v. *Van Schoonhoven* (1882) 87 N. Y. 446; see *Foster* v. *Beals* (1860) 21 N. Y. 247, estops him from pleading ignorance of the assignment. *Brown* v. *Blydenburgh* (1852) 7 N. Y. 141; *Wilson* v. *Campbell* (1896) 110 Mich. 580; *contra, Olsen* v. *Northwestern etc. Co.* (1896) 65 Minn. 475. The courts of New York for a time did not consider a mere failure to surrender the securities sufficient to put the debtor on inquiry, *Van Keuren* v. *Corkins* (1876) 66 N. Y. 77; *Barns* v. *L. I. Real Estate Co.* (1903) 88 App. Div. 83, but the principal case follows another recent decision, *Syracuse Savings Bank* v. *Merrick* (1905) 182 N. Y. 387, in agreeing with the general rule.

Municipal Corporations—Closing of Streets—Persons Entitled to Damages.—The plaintiff sued under a statute granting compensation to property owners damaged by the discontinuance of any street. N. Y. Laws 1895, c. 1006, § 6. Her property did not abut on the street to be closed, but was wholly dependent upon it for access. *Held,* the plaintiff was entitled to compensation. *In re 151st St. in City of New York* (1912) 133 N. Y. Supp. 894.

Nearly all States have provided, either in their constitutions or by statute, that one whose property is injured by the closing of a street shall have a right to compensation. Lewis, Eminent Domain, (3rd ed.) § 197. These provisions, however, are usually general in their terms, and are interpreted as applying only when the property owner has suffered some special injury different in kind as well as in degree from the damage to the general public. *Hyde* v. *Fall River* (1905) 189 Mass. 439; *Heinrich* v. *St. Louis* (1894) 125 Mo. 424. An abutting owner is regarded as suffering such an injury when the street in front of his land is vacated, *Heinrich* v. *St. Louis supra,* or when his access to the general system of streets of the municipality is cut off. *Putnam* v. *Railroad* (1903) 182 Mass. 351; *MacGinnitie* v. *Silvers* (1906) 167 Ind. 321. When access in one direction, but not in another, is prevented by the discontinuance of a street, the authorities differ as to the right of the property owner to compensation. The better view recognizes such a right, on the ground that the property suffers a depreciation in value which is an injury entirely distinct from the inconvenience caused the owner by the termination of his right as a member of the public to use the street. *In re Melon St.* (1897) 182 Pa. 397; *contra, Smith* v. *Boston* (Mass. 1851) 7 Cush. 254. Moreover, it would seem to follow that owners of property not abutting on the discontinued street should also be entitled to compensation for a destruction of the right of access, and the decision of the principal case agrees with the view prevailing in those jurisdictions in which similar cases have arisen. *Petition of Concord* (1871) 50 N. H. 530; *Mellor* v. *Phila.* (1894) 160 Pa. 614.

NEGLIGENCE—IMPUTED NEGLIGENCE—JOINT ENTERPRISE.—The plaintiff, while engaged in a car inspection, was injured through the concurrent negligence of the defendant and his own co-employee, whose duty was to warn him of approaching dangers. *Held,* one judge dissenting, the negligence of the plaintiff's helper should not be imputed to him. *Rosenbaum Grain Co.* v. *Mitchell* (Tex. Civ. App. 1912) 142 S. W. 121. See Notes, p. 541.

PARTNERSHIP—ACTIONS AT LAW BETWEEN PARTNERS—TROVER FOR CONVERSION OF FIRM PROPERTY.—A partner, having wrongfully transferred personal property of the firm to a third person, was sued by his co-partner in trover. *Held,* the action was maintainable. *Weiss* v. *Weiss* (1912) 133 N. Y. Supp. 1021. See Notes, p. 546.

PATENTS—CONTRIBUTORY INFRINGEMENT.—The defendant sold unpatented inks to persons who had bought patented mimeographs from the plaintiff with the restriction that they should be used only with inks purchased from the plaintiff. *Held,* the defendant's sale, with knowledge of the purchasers' intention to infringe the patent, was a contributory infringement. *Henry* v. *A. B. Dick Co.* (1912) 32 Sup. Ct. Rep. 364.

Sales of an unpatented element of a patented combination, or of unpatented articles essential to the use of a patented device, which the patentee sold with the restriction that such articles should be furnished by him, are, when made with knowledge that the purchaser will use the articles to infringe the patent, regarded as contributory infringements. *Celluloid Co.* v. *Zylonite Co.* (1887) 30 Fed. 437; *Button-Fastener Co.* v. *Specialty Co.* (1896) 77 Fed. 285; *Aeolian Co.* v. *Juelg Co.* (1907) 155 Fed. 119. By one view, the basis of a contributory infringer's liability is the common law liability of one who aids and abets a trespass. *Thomson-Houston Co.* v. *Brass Co.* (1897) 80 Fed. 712, 721. This is unsatisfactory, for it does not seem that one who merely furnished materials used in the commission of a tort was guilty of aiding and abetting at common law. *Stud Co.* v. *O'Brien* (1898) 93 Fed. 200. The better ground for such liability would seem to be that a court of equity, having first ascertained that the patent is being infringed, will enjoin the contributory infringer from further continuance of his participation in the tort, even though he was not primarily liable as a joint tort feasor. *Stud Co.* v. *O'Brien supra.* This is a logical extension of the doctrine that equity will restrain a continuous trespass. 4 Pomeroy, Eq. Jur. (3rd ed.) § 1351. The number of principal infringers is generally so great, and the injury inflicted by each so insignificant, that the patentee's only adequate remedy is stopping the infringement at its source by enjoining the vendor of the articles which make infringement possible.

REAL PROPERTY—ESTATES BY ENTIRETIES—EFFECT OF MARRIED WOMEN'S ACTS.—The plaintiff, having bought at an execution sale the interest of a judgment debtor in certain lands owned in entireties by the debtor and his wife, sought partition of the said lands. *Held,* the plaintiff took as tenant in common with the debtor's wife, subject to her right of survivorship, but he could not maintain partition. *Bartkowaik* v. *Sampson et al.* (1912) 133 N. Y. Supp. 401. See Notes, p. 539.

RECEIVERS—CORPORATION TAX LEVIED DURING RECEIVERSHIP—PRIORITY OVER MORTGAGE.—A corporation mortgaged its ferry property to a

trustee for bondholders. Pending foreclosure a receiver was appointed who managed the property until it was sold "subject to all taxes which might be liens thereon." *Held,* the purchaser took subject to corporation taxes levied during the receivership. *New York Terminal Co.* v. *Gaus* (N. Y. 1912) 98 N. E. 11.

While operating franchises may well pass with other corporate property by sale or mortgage, *Willamette M'f'g Co.* v. *Bank* (1886) 119 U. S. 191, the primary franchise to be a corporation is, unless by express statute, see *Pierce* v. *Emery* (1856) 32 N. H. 484, inalienable. 3 Thompson, Corporations, (2nd ed.) §§ 2900-2902. Therefore the appointment of a receiver pending foreclosure does not terminate the separate existence of the corporation, *Decker* v. *Gardner* (1891) 124 N. Y. 334, for he assumes control of only the mortgaged property. *Bank of Montreal* v. *Fibre Co.* (1901) 2 New Bruns. Eq. 328. The sequestered property is subject as before to taxes upon the mortgaged operating franchises, *Chesapeake & Ohio Ry.* v. *Atlantic Transp. Co.* (1900) 62 N. J. Eq. 751, and this is clearly just, for such charges, like other expenses of operation, *Buster* v. *Mann* (1900) 69 Ark. 23, should be borne by the creditors who are ultimately to receive the earnings. But a principal purpose of the receivership is to remove the mortgaged property beyond the reach of new liens for which it is not primarily liable. *Cowan* v. *Plate Glass Co.* (1898) 184 Pa. 1. It would therefore seem, on principle, that the lien of a corporation tax, which is not a tax upon any part of the sequestered property, should not charge that property in the hands of the receiver. *Crews* v. *United States Car Co.* (1898) 57 N. J. Eq. 357; *cf. Matter of Mather* (1894) 52 N. J. Eq. 607. The court in the principal case, however, professed to follow an earlier New York decision, *Central Trust Co.* v. *R. R. Co.* (1888) 110 N. Y. 250, in holding that a receiver pending foreclosure operates under the corporate franchise, and so that the tax is a lien upon the property in his hands.

STATUTE OF FRAUDS—CONTRACTS—ESCROW DEED.—The defendant contracted orally to convey land to a third person named by the plaintiff, and delivered a deed in escrow. *Held,* the escrow deed did not render the contract valid under the Statute of Frauds. *Barr* v. *Johnson* (Ark. 1912) 144 S. W. 527.

The delivery of a deed in escrow does not render an oral contract for the sale of land enforceable against the vendee, for he has not signed the deed, and has received nothing under the contract until there is a second delivery. *Cagger* v. *Lansing* (1871) 43 N. Y. 550; *Ducett* v. *Wolf* (1890) 81 Mich. 311. It has also been held that, as such a deed is of no effect in passing title, it will not make the contract enforceable against the vendor. *Freeland* v. *Charnley* (1881) 80 Ind. 132. According to another view, however, the vendor, in signing the deed, has given a sufficient memorandum in writing to take the case out of the Statute of Frauds. See *Jenkins* v. *Harrison* (1880) 66 Ala. 345. The correctness of this doctrine becomes apparent when the very informal writings which have been regarded as satisfying the Statute are taken into consideration, see Fry, Specific Performance, §§ 504, 505, and it is further supported by many decisions holding that a deed with which the vendor has never parted is sufficient to render an oral contract enforceable. *Blacknall* v. *Parish* (N. C. 1860) 6 Jones Eq. 70; *Wood* v. *Davis* (1876) 82 Ill. 311. But this rule should be restricted to the comparatively

few cases in which the deed expresses all the material terms of the contract, *Popp* v. *Swanke* (1887) 68 Wis. 364; *Kopp* v. *Reiter* (1893) 146 Ill. 437, and it is obvious, therefore, that the plaintiff in the principal case, who was not named in the deed, could not use it to enforce the contract. *Henderson* v. *Beard* (1889) 51 Ark. 483.

STATUTE OF FRAUDS—PAROL EVIDENCE CONNECTING SEVERAL WRITINGS.—The plaintiff sought to support an action upon a contract by introducing parol evidence to connect several writings which together contained the terms of the contract, but which made no reference to each other. *Held,* the evidence was not admissible. *Roaring Springs Blank Book Co.* v. *Lesser* (1912) 133 N. Y. Supp. 1032.

It is everywhere agreed that a contract may be taken out of the Statute of Frauds by several writings which, when read together, clearly present the entire agreement, *Thayer* v. *Luce* (1871) 22 Oh. St. 62, and that when the writing signed by the promisor refers to others, they may be identified by parol. *Beckwith* v. *Talbot* (1877) 95 U. S. 289; *Wilkinson* v. *Taylor M'f'g. Co.* (1889) 67 Miss. 231. When there is no such reference, the courts in this country are practically unanimous in refusing parol testimony to connect the separate writings, *Ridgway* v. *Ingram* (1875) 50 Ind. 145; *Johnson* v. *Buck* (1872) 35 N. J. L. 338; *contra, Lee* v. *Mahoney* (1859) 9 Ia. 344, on the ground that to admit it would defeat the very purpose of the Statute by permitting parol proof of the promisor's intention. The English courts were formerly in accord with this view, *Jacob* v. *Kirk* (1839) 2 M. & R. 221; see also *Clinan* v. *Cook* (1802) 1 Sch. & Lef. 22, but they have departed from it, and now hold that to reject the evidence would be to permit a technicality to obstruct justice. *Oliver* v. *Hunting* (1890) L. R. 44 Ch. D. 205, *Long* v. *Millar* (1879) L. R. 4 C. P. D. 450. This departure seems justifiable, for it is submitted that, when the promisor has put into several writings all the essential terms of the contract, it does not amount to parol proof of his intention to permit the promisee to show that all are parts of a whole, and that to deny him that right works injustice.

SURETYSHIP AND GUARANTY—CONTRACTS—CONSTRUCTION.—The defendant contracted to guarantee indebtedness to the amount of $2,000. The plaintiff extended credit to the assured for more than that amount, and the defendant claimed that this was contrary to the contract and absolved him from liability. *Held,* the limitation applied to the guarantor's liability, and not to the amount of credit to be given. *Carson* v. *Hurst* (Ga. 1912) 74 S. E. 52.

It has been held that a contract of guaranty should be construed most strongly against the creditor, on the ground that one who relies upon such an instrument should ascertain that the guarantor's liability is clearly expressed, *Nicholas* v. *Paget* (1832) 1 Cr. & M. 48, and also because the law should not compel one man to pay another's debt unless he plainly manifests his intention to be liable. See *Russell* v. *Clark's* Ex'rs. (1812) 7 Cranch 69, 90. But, going to the opposite extreme, other courts construe such contracts against the guarantor as strongly as the wording permits, *Mason* v. *Pritchard* (1810) 12 East 227; *Drummond* v. *Prestman* (1827) 12 Wheat. 515, holding that, by failing to clearly limit his liability, he becomes responsible to creditors misled by his negligence. *Bright* v. *McKnight* (Tenn. 1853) 1 Sneed 158; *Mamerow* v. *Nat. Lead Co.* (1900) 98 Ill. App. 460. By the weight of authority now, however, contracts of guaranty, like other contracts,

should be construed according to the popular sense of the words employed, without favoring either party. *Noyes* v. *Nichols* (1855) 28 Vt. 159. It is only where there is an ambiguity, unexplained by parol evidence, that the technical rule that written instruments will be construed against the maker should apply. *Crist* v. *Burlingame* (N. Y. 1862) 62 Barb. 351. The decision in the principal case recognizes these rules of construction, and the result reached is in accordance with other decisions upon similar facts. *Rindge* v. *Judson* (1861) 24 N. Y. 64; *Church* v. *Albers* (1903) 174 Mo. 331.

TRUSTS—RESULTING TRUSTS—STATUTE OF FRAUDS—CONVEYANCE TO WIFE.—The plaintiff paid for a conveyance which was taken in the name of his wife, who orally undertook to hold in trust for him. At her death, she devised the property to her heirs. *Held,* the plaintiff was without remedy. *Mullong* v. *Schneider et al.* (Ia. 1912) 134 N. W. 957.

When a conveyance is taken in the name of another, it is fundamental that a trust results to the one who pays the purchase price, on the equitable theory that it is intended that the use shall accompany the consideration. 3 Pomeroy, Eq. Jur. (3rd ed.) § 1031. Also, when a blood consideration exists, the presumption of a resulting trust gives way to one of an intended gift or advancement. *Dyer* v. *Dyer* (1788) 2 Cox 92; *Grey* v. *Grey* (1677) 2 Swanst. 594. Either presumption may be rebutted by convincing parol evidence of an intention contrary to it, *Williams* v. *Williams* (1863) 32 Beav. 370; see *Marshall* v. *Crutwell* (1875) L. R. 20 Eq. 328, for resulting trusts are regarded as arising by operation of law and hence as expressly exempted from the Statute of Frauds, 1 Perry, Trusts, (6th ed.) § 137. Moreover, an express declaration of trust is mere surplusage upon proof of facts otherwise sufficient to raise a resulting trust, which may accordingly exist, though the express declaration cannot be proved because of the Statute of Frauds. *Barrows* v. *Bohan* (1874) 41 Conn. 278; *Robinson* v. *Leflore* (1881) 59 Miss. 148. But when, as in the principal case, the facts do not give rise to this presumption, it is said that to raise a resulting trust by proof of an express declaration would be to give effect to a parol trust, which is void by the Statute of Frauds. Bispham, Equity, (7th ed.) § 80; *Sheldon* v. *Harding* (1867) 44 Ill. 68. But as the intention of the grantor is controlling, it is at least arguable that the express declaration should be admitted merely to rebut the presumed advancement, in which case the payment of the purchase price by the plaintiff would cause a trust to result to him. It would seem, in any event, that the plaintiff should have been allowed to recover on the theory of a constructive trust arising from the defendant's unconscientious retention of the property. 6 COLUMBIA LAW REVIEW 326.

TRUSTS—VOLUNTARY DECLARATION OF TRUST IN REAL ESTATE.—The plaintiff sought to enforce a trust which the defendant had voluntarily declared on his land. *Held,* the absence of consideration did not defeat the trust. *Schumacher* v. *Dolan* (Ia. 1912) 134 N. W. 624.

At common law a use could be created without consideration by fine, feoffment or recovery; but when there was no transmutation of possession a blood or valuable consideration was necessary. Gilbert, Uses, (2nd ed.) 46. Accordingly, no use would be enforced in favor of a volunteer unless the owner had parted with his legal title. Doctor & Student, Dial. II, Ch. 22, 23; see *Sharington* v. *Strotton* (1565) Plowden 298. It was later held that the legal owner of a chose

in action might create himself trustee of it by a voluntary declaration in favor of another. *Ex parte Pye* (1811) 18 Ves. 140. However anomalous this decision may be upon strict principles, it was a result flowing naturally from the difficulties at that time surrounding the voluntary transfer of a chose in action. It is therefore probable that a different result would have been reached, in accordance with the older authorities, had the *res* consisted of an interest in land, which was freely transferable. While in England the doctrine has been extended to support a voluntary declaration of trust in land, *Steele* v. *Waller* (1860) 28 Beav. 466, in this country the courts, adhering to common law principles, have denied its application to real estate. *Pittman* v. *Pittman* (1890) 107 N. C. 159; *Thompson* v. *Branch* (Tenn. 1838) Meigs 390; *contra, Leeper* v. *Taylor* (1892) 111 Mo. 312. As the soundness of the doctrine that a voluntary declaration of trust is enforceable, is, as an original proposition, questionable, this reluctance to extend its application to land is commendable.

VENDOR AND PURCHASER—BONA FIDE PURCHASER—POSSESSION OF A TENANT AS NOTICE OF HIS LANDLORD'S TITLE.—Land in possession of a tenant was conveyed to the plaintiff, who failed to record his deed. While the tenant continued in possession, the grantor conveyed to the defendant, who had knowledge of the original lease, but was ignorant of the deed. *Held,* three judges dissenting, the possession of the tenant was sufficient to put the defendant upon inquiry as to the plaintiff's claim. *Penrose* v. *Cooper* (Kan. 1912) 121 Pac. 1103. See Notes, p. 549.

VENDOR AND PURCHASER—WAREHOUSE RECEIPTS—TRANSFER.—The owner of cotton deposited it in the defendant's warehouse, and took a receipt which stipulated that it should be returned on delivery of the cotton. He then sold the receipt to the plaintiff, and later induced the defendant to deliver the cotton to himself. The plaintiff sued for the value of the cotton, and the defendant pleaded that it had no notice of the transfer of the receipt. *Held,* one judge dissenting, the plea was good. *Stamford Compress Co.* v. *Farmers' & Merchants' Bank* (Tex. 1912) 143 S. W. 1142.

Warehouse receipts are documents of title, and their delivery has the same effect in transferring title as the delivery of the goods themselves. *Gibson* v. *Stevens* (1850) 8 How. 384; *Bank* v. *Hurt* (1892) 99 Ala. 130. At common law, since there was no privity of contract between the assignee of such receipts and the warehouseman, the assignee could proceed against the warehouseman only in the name of his assignor. *Thompson* v. *Dominy* (1845) 14 M. & W. 402. Now statutes in most States have made warehouse receipts negotiable. See statutes in Mohun, Warehousemen. Under these statutes, however, the receipts are not regarded as negotiable instruments, in a technical sense, but the effect of the statutes is merely to permit the assignee to proceed directly against the warehouseman. *Shaw* v. *Railroad* (1879) 101 U. S. 557. Since the purpose of this legislation was to make warehouse receipts freely assignable, it seems that the assignee should no longer be required to inform the warehouseman of an assignment. In issuing the receipts, the warehouseman represents that he will hold the goods for the owner of the receipts, and he should be estopped from setting up a delivery to anyone else as a defense. *Star Compress Co.* v. *Meridan Cotton Co.* (1905) 87 Miss. 228.